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Pleading--Misjoinder

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ABSTRACTS

Pleading-Misjoinder

Petitioner Sangster sought a writ of mandamus in the West Virginia Supreme Court of Appeals to compel the circuit court to dismiss joined parties in a condemnation proceeding. In the proceeding before the circuit court, a public utility sought an easement over real property owned by Harold Sangster. A local bank which held an outstanding thirty day note, and the trustee for Sangster's deed of trust on the property were joined as respondents. Before any decision, Petitioner Sangster paid the full amount due, recorded the release of the deed of trust, and then moved the circuit judge to dismiss the bank and trustee as parties, alleging that the misjoinder was preventing him from removing his case to federal court. The primary issue presented to the court was whether the statutory provision declaring that "the parties misjoined shall be dropped . . . at any stage of the cause," W. VA. CODE ch. 56, art. 4, § 34 (Michie 1966), was applicable to an eminent domain proceeding. *Held*, writ awarded. The comprehensive language of the statute indicated that the intention of the Legislature was to include all types of litigation, and that it is the mandatory duty of the trial judge upon a showing of misjoinder anytime during the litigation to dismiss such parties. *State ex rel. Sangster v. Sencindiver*, 170 S.E.2d 673 (W. Va. 1969).

The significance of the case lies in the imperative construction of the statute by the court. Although the West Virginia Rules of Civil Procedure specifically exclude eminent domain proceedings from their application, the contrast is worth noting. W. VA. R. CIV. P. 81 (a) (6). Rule 21 provides only that "[p]arties *may be* dropped . . . at any stage of the action. . . ." W. VA. R. CIV. P. 21 (emphasis added).

Torts—Products Liability

Dayton Electric Manufacturing Company, a wholesale distributor, sold a sump pump that was not equipped with a ground wire or overload protector to Hollan. About a year after the pump had been installed Hollan called upon her neighbor, Keener, to assist in removing ankle-deep water from her basement. When Keener attempted to lift the pump out of the sump in an effort to get it working he was electrocuted. Keener's widow brought a wrongful death action against the distributor. In the trial court, judgment